

returns and EFT remittances in accordance with this subpart.

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§ 53.159 Deposit requirement for deposits made for calendar quarters beginning on or after July 1, 1995.

(a) *Definitions*—(1) *Definition of tax liability.* For purposes of this section, the term “tax liability” means the total tax liability for the specified period plus or minus any allowable adjustments made in accordance with the instructions applicable to the form on which the return is made.

(2) *Semimonthly period.* Except as provided in paragraph (c)(4)(ii) of this section, the term “semimonthly period” means the first 15 days of a calendar month or the remaining portion of a calendar month following the 15th day of that month.

(b) *In general*—(1) *Semimonthly deposits.* Except as provided in paragraphs (b)(2), (c)(2), and (j) of this section, any person required to file a quarterly excise tax return on TTB Form 5300.26 must make a deposit of tax for each semimonthly period as prescribed in paragraph (c) of this section.

(2) *One-time or occasional filings.* No deposit is required in the case of any taxes reportable on a one-time or occasional filing (as defined in § 53.151(a)(5)).

(c) *Amount of deposit*—(1) *In general.* Except as provided in paragraphs (c)(2), (c)(3) and (c)(6) of this section, the deposit of tax for each semimonthly period must be equal to the amount of tax liability incurred during that semimonthly period. Except as provided in paragraph (c)(3) of this section, no deposit is required for any semimonthly period in which no tax liability is incurred.

(2) *De minimis exception.* Except as provided in paragraph (c)(3) of this section, any person who has a tax liability for the current calendar quarter of \$2,000 or less is not required to make deposits for that quarter. However, semimonthly deposits of tax are required beginning with the semimonthly period in which unpaid tax liability exceeds \$2,000 and for every semimonthly period thereafter in which tax liability

is incurred. The first deposit for the current quarter shall be equal to the unpaid tax liability; thereafter, deposits shall be equal to the amount of tax liability incurred during that semimonthly period.

(3) *Amount of deposit; safe harbor rule based on look-back quarter liability; In general.* Except as provided in paragraph (c)(6) of this section, any person who made a return of tax on TTB Form 5300.26 reporting taxes for the second preceding calendar quarter (the “look-back quarter”), or who did not file a return for the look-back quarter because of the provisions of § 53.151(a)(2), is considered to have complied with the requirement for deposit of taxes for the current calendar quarter if—

(i) The deposit of taxes for each semimonthly period in the current calendar quarter is an amount equal to not less than 1/6 (16.67 percent) of the total tax liability incurred for the look-back quarter;

(ii) Each deposit is made on time; and

(iii) The amount of any underpayment of taxes for the current calendar quarter is paid by the due date of the return.

(4) *Modification for third calendar quarter.* The safe harbor rule in paragraph (c)(3) of this section does not apply for the third calendar quarter unless—

(i) The deposit of taxes for the semimonthly period July 1–September 15 meets the requirements of paragraph (c)(3) of this section; and

(ii) Each deposit of taxes for the periods September 16–25 and September 26–30 is not less than 1/12th (8.34 percent) of the total tax liability incurred for the look-back quarter.

(5) *Modification for tax rate increase*—

(i) *Application.* The safe harbor rule as prescribed in paragraph (c)(3) is modified for the first and second calendar quarters beginning on or after the effective date of an increase in the rate of any tax prescribed by 26 U.S.C. 4181 to which this part 53 applies.

(ii) *Modification.* The amount of deposit for calendar quarters referred to in paragraph (c)(3) of this section must be adjusted so that the deposit of taxes for each semimonthly period in the calendar quarter is not less than 1/6 (16.67 percent) of the tax liability the person

would have had with respect to the tax for the look-back quarter if the increased rate of tax had been in effect for that look-back quarter.

(6) *First time filers.* Any person who did not file a return of tax on TTB Form 5300.26 for the first and second preceding calendar quarters because they were not engaged in any activity with respect to which tax is reportable on the return in the course of a trade or business, is considered to have complied with the requirement for deposit of taxes for the current calendar quarter if—

(i) The deposit of taxes for each semi-monthly period in the calendar quarter is not less than 95 percent of the tax liability incurred with respect to those taxes during the semimonthly period;

(ii) Each deposit is made on time; and

(iii) The amount of any underpayment of taxes for the current calendar quarter is paid by the due date of the return.

(d) *Failure to comply with deposit requirements.* (1) If a person fails to make deposits as required under this part, the appropriate TTB officer may withdraw the person's right to use the safe harbor rule provided by paragraph (c)(3) of this section.

(2) *Cross reference.* The appropriate TTB officer may also require a taxpayer who fails to make deposits of tax to file a monthly or semimonthly return, see § 53.151(b)(1).

(e) *Time for making deposit.* Except for deposits for the period September 16–25, each deposit required to be made by this section shall be made not later than the 9th day of the semimonthly period following the close of the period for which it is made. The deposit for the period September 16–25 shall be made not later than September 28. The deposit for the period September 26–30, is due not later than October 9.

(f) *Last day for filing.* (1) Except as provided by paragraph (f)(2) of this section, if the due date of the deposit falls on a Saturday, Sunday, or legal holiday, the deposit and remittance shall be due on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this section, “legal holiday” is defined by section 7503 of the Code and 27 CFR 70.306(b) of this chapter.

(2) If the required due date of the deposit for the period September 16–25 falls on a Saturday, the deposit and remittance shall be due on the preceding day. If such required due date falls on a Sunday, the return and remittance shall be due on the following day.

(g) *Forms and procedures.* Each remittance of amounts required to be deposited shall be accompanied by Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposit form, or Form 5300.26, Federal Firearms and Ammunition Excise Tax Return, which shall be prepared in accordance with the applicable instructions. Taxpayers electing to remit deposits by EFT pursuant to § 53.158 shall prepare and submit Form 5300.26 or Form 5300.27 in accordance with the instructions contained in Procedure 92–1, Publication 5000.11. The timeliness of the deposit will be determined by the date it is received by the lockbox financial institution, or the TTB officer designated on the form accompanying the deposit, or the Treasury Account, when made by EFT. In order for deposits of less than \$20,000 made by U.S. Mail to be considered received timely, the date of mailing must be on or before the second day preceding the due date of the deposit as evidenced by the official postmark of the U.S. Postal Service stamped on the cover in which the deposit was mailed. When the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the taxpayer. When the taxpayer sends the deposit by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the deposit. Any deposit of \$20,000 or more must be received by the last day prescribed for making such deposit, regardless of when mailed. Amounts deposited pursuant to this paragraph shall be considered to be paid on the last day prescribed for filing the return in respect of the tax (determined without regard to any extension of time for filing the returns), or at the time deposited, whichever is later.

(h) *Number of remittances.* A person required by this section to make deposits shall make one deposit for a semimonthly period.

(i) *Procurement of prescribed forms.* Copies of the Federal Firearms and Ammunition Excise Tax Deposit form will be furnished, so far as possible, to persons required to make deposits under this section. Such a person will not be excused from making a deposit however, by the fact that no form has been furnished. A person not supplied with the form is required to obtain the form in ample time to make the required deposits within the time prescribed. Copies of the Federal Firearms and Ammunition Excise Tax Deposit form are available as provided in § 53.21(b).

(j) *Taxpayers required to file monthly or semimonthly returns.* This section does not apply to taxes for:

(1) Any month or semimonthly period in which the taxpayer receives notice pursuant to section 53.151(b) to file TTB Form 5300.26; or

(2) Any subsequent month or semimonthly period for which a return on TTB Form 5300.26 is required.

(3) Taxpayers required to file monthly returns shall make semimonthly deposits of 100 percent of the liability incurred during each semimonthly period by the 9th day of the month following the last day of the semimonthly period. Taxpayers required to file semimonthly returns shall pay any tax due for the semimonthly period with each return.

(k) *Examples.*

Example 1. One-time filing or occasional filing—(1) Facts. On October 18, 1995, A, an individual who lives in the United States purchases a custom made rifle outside the United States and imports it into the United States. A uses the rifle on October 20, 1995. A is liable for the firearms excise tax imposed by sections 4181 and 4218(a). Since A does not regularly sell rifles in arm's length transactions, a constructive sale price of \$20,000 is determined (§ 53.115(b)). The amount of A's tax liability is \$2200, 11 percent of the constructive sale price of the rifle. The liability is incurred during the fourth calendar quarter of 1995, the quarter during which the rifle is used (§ 53.111(d)). A did not import the rifle in the course of its trade or business and does not engage in any activities with respect to which tax is reportable on TTB Form 5300.26 in the course of a trade or business.

(2) *Filing requirement.* A must file a return on Form 5300.26 (§ 53.151(a)) for the fourth calendar quarter of 1995 reporting A's \$2200

firearms excise tax liability. The Form 5300.26 is due by January 31, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). Because A did not import the firearm in the course of its trade or business and does not engage in any activities with respect to which tax is reportable in the course of a trade or business, the return is a one-time filing or occasional filing.

(3) *Payment requirement.* Because A's Form 5300.26 is a one-time filing, A is not required to make deposits of tax (§ 53.159(b)(2)). Instead, A pays the \$2200 of tax with the return.

Example 2. Deposit requirement; based on look-back quarter liability—(1) Facts. B is a manufacturer of firearms. B sells 75 pistols which have a taxable sale price of \$500 each during the second calendar quarter of 1996. B sold 50 of the pistols in the first semimonthly period of May, 1996, and the other 25 pistols in the second semimonthly period of April, 1996. B did not incur tax liability in any other semimonthly period in the second quarter. The amount of B's tax liability for the second calendar quarter is \$3,750, 10 percent of the taxable sale price of the pistols. B filed Form 5300.26 for the second preceding calendar quarter, the look-back quarter, on January 31, 1996 reporting tax liability in the amount of \$2,700.

(2) *Deposit requirement.* B is required to make deposits of tax for each semimonthly period in the calendar quarter because B has incurred more than \$2,000 in liability for the current quarter. B may use the safe harbor rule based on look-back quarter liability to determine the amount of the required deposits (§ 53.159(c)(3)). Under this safe harbor rule, B's deposit for each semimonthly period must equal at least \$450.00, 1/6 (16.67 percent) of the tax liability incurred for the look-back quarter. B's deposit must be timely and B must pay the amount of any underpayment by the due date of the return. Accordingly, B meets the deposit requirement if B makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
April 1–15	April 24, 1996	\$450.00
April 16–31	May 9, 1996	450.00
May 1–15	May 24, 1996	450.00
May 16–30	June 10, 1996	450.00
June 1–15	June 24, 1996	450.00
June 16–30	July 9, 1996	450.00

The deposit due on June 10, 1996, would ordinarily be due on June 9, 1996. However, because June 9, 1996 is a Sunday, under section 7503, B has an additional day to make the required deposit.

(3) *Filing requirement.* B must file a return on Form 5300.26 for the second calendar quarter of 1996 reporting B's \$3750 tax liability (§ 53.151(a)). The form 5300.26 is due by July

§ 53.159

31, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). B must also pay \$1050.00, the underpayment amount by which the total tax liability for the second calendar quarter exceeds the total tax liability for the look-back quarter, by the due date of the return.

Example 3. Deposit amount; no liability in look-back quarter—(1) Facts. C, a manufacturer of ammunition, filed returns for the first, second and third quarters of 1995 reporting C's tax liability. During the fourth quarter of 1995, C did not make any taxable sales of shells or cartridges, thereby incurring no tax liability for that return period. C did not file Form 5300.26 for the fourth calendar quarter since no tax liability was incurred (§ 53.151(a)(2)). C made taxable sales in the second quarter of 1996 amounting to \$25,500.00, incurring a tax liability of \$2805.

(2) *Deposit requirement.* Ordinarily, C would be required to make deposits of tax for each semimonthly period in the calendar quarter because C's total liability for the current calendar quarter exceeds \$2,000. However, since C incurred a tax liability of \$0 in the second preceding calendar quarter (the look-back quarter) (§ 53.159(c)(3)), under the safe harbor rule, C is not required to make deposits of tax.

(3) *Filing requirement.* C is required to file a return on Form 5300.26 reporting C's \$2805 ammunition excise tax liability. The form 5300.26 is due by July 31, 1996.

(4) *Payment requirement.* C must pay the \$2805 tax with the return.

Example 4. Deposit requirement; First time Filer—(1) Facts. D, a manufacturer of firearms, began business on 2/16/96. D sold 300 shotguns which had a taxable sales price of \$210 each during the first quarter of 1996. D sold 70 shotguns in the second semimonthly period of February, 1996, 130 shotguns in the first semimonthly period of March, 1996 and 100 shotguns in the second semimonthly period of March, 1996. The amount of D's tax liability for the first quarter of 1996 is \$6,930, 11 percent of the taxable sale price of the shotguns.

(2) *Deposit requirement.* D is required to make a deposit of tax when D's tax liability exceeds \$2,000 (§ 53.159(c)(2)). Therefore, D must make a deposit of tax beginning with the first semimonthly period in March, the semimonthly period in which D's unpaid tax liability exceeded \$2,000. Because D, a first time filer, does not have an established look-back quarter, D's deposit of tax must be at least 95 percent of the incurred tax liability. D is required to make deposits of at least 95 percent of incurred tax liability for every semimonthly period in the quarter thereafter. D's deposits must be timely and any underpayment of tax must be paid by the due date of the return. Accordingly, D meets the deposit requirement if D makes the following deposits:

27 CFR Ch. I (4–1–11 Edition)

Semimonthly period	Deposit due by	Amount of deposit
Feb. 16–29	March 11, 1996	\$0
March 1–15	March 25, 1996	4,389
March 16–31	April 9, 1996	2,194.50

The deposits due on March 11, 1996, and March 25, 1996, would ordinarily be due on March 9, 1996, and March 24, 1996, respectively. However, because March 9, 1996, is a Saturday, and March 24, 1996, is a Sunday, under section 7503, D has until March 11, 1996, to make the deposit due on March 9, 1996, and until March 25, 1996, to make the deposit due on March 24, 1996.

(3) *Filing requirement.* D must file a return on Form 5300.26 for the first calendar quarter of 1996 reporting D's \$6,930 tax liability (§ 53.151(a)). The form 5300.26 is due by April 30, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). D must also pay \$346.50, the amount by which the tax liability for the quarter was underpaid, by the due date of the return.

Example 5. Deposit amount; third calendar quarter—(1) Facts. E, a manufacturer of firearms, is a semimonthly depositor who makes deposits of tax using the safe harbor rule based on the look-back quarter to determine the amount of tax required to be deposited for the third calendar quarter of 1995. E incurred a tax liability amounting to \$38,000 for the third quarter. E filed Form 5300.26 for the second preceding calendar quarter, the look-back quarter on May 1, 1995, reporting tax liability in the amount of \$30,000.

(2) *Deposit requirement.* Because E has incurred more than \$2,000 in liability and has chosen to make deposits of tax based on the look-back quarter, E is required to make deposits of tax equal to \$5,000, 1/6 (16.67 percent) of the tax liability incurred in the look-back quarter, for each semimonthly period in the calendar quarter. However, because of the special rule which modifies the safe harbor rule for deposits of tax for the month of September (§ 53.159(c)(4)), E must make deposits equal to \$2500.00 each, 1/12th (8.34 percent) of the tax liability incurred in the look-back quarter for the periods September 16–25 and September 26–30. E's deposits must be timely and E must pay the amount of any underpayment by the due date of the return. Accordingly, E meets the deposit requirement if E makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
July 1–15	July 24, 1995	\$5000.00
July 16–31	August 9, 1995	5000.00
Aug. 1–15	August 24, 1995	5000.00
Aug. 16–31	Sept. 11, 1995	5000.00
Sept. 1–15	Sept. 25, 1995	5000.00
Sept. 16–25	Sept. 28, 1995	2500.00
Sept. 26–30	October 9, 1995	2500.00

The deposits due on September 11, 1995, and September 25, 1995, would ordinarily be due on September 9, 1995, and September 24, 1995, respectively. However, because September 9, 1995, is a Saturday, and September 24, 1995, is a Sunday, under section 7503, D has until September 11, 1995, to make the deposit due on September 9, 1995, and until September 25, 1995, to make the deposit due on September 24, 1995.

(3) *Filing requirement.* E must file a return on Form 5300.26 for the third calendar quarter of 1995 reporting E's \$38,000 tax liability (§ 53.153(a)). E must also pay \$8,000, the underpayment amount by which the total tax liability for the third calendar quarter exceeds the total tax liability for the look-back quarter, by the due date of the return.

[T.D. ATF-365, 60 FR 33671, June 28, 1995, as amended by T.D. ATF-447, 66 FR 19089, Apr. 13, 2001; T.D. TTB-44, 71 FR 16958, Apr. 4, 2006]

§ 53.161 Authority to make credits or refunds.

For provisions relating to credits and refunds of certain taxes on sales and services see section 6416 of the Code and §§ 53.171–53.186. For regulations under section 6402 of the Code of general application in respect of credits or refunds, see 27 CFR 70.122, 70.123, and 70.124 (Procedure and Administration).

§ 53.162 Abatements.

For regulations under section 6404 of the Code of general application in respect of abatements of assessments to tax, see 27 CFR 70.125 (Procedure and Administration).

§§ 53.163–53.170 [Reserved]

§ 53.171 Claims for credit or refund of overpayments of manufacturers taxes.

Any claims for credit or refund of an overpayment of a tax imposed by chapter 32 of the Code shall be made in accordance with the applicable provisions of this subpart and the applicable provisions of 27 CFR 70.123 (Procedure and Administration). A claim on TTB Form 2635 (5620.8) is not required in the case of a claim for credit, but the amount of the credit shall be claimed by entering that amount as a credit on a return of tax under this subpart filed by the person making the claim. In this regard, see § 53.185.

§ 53.172 Credit or refund of manufacturers tax under chapter 32.

(a) *Overpayment not described in section 6416(b)(2) of the Code—(1) Claims included.* This paragraph applies only to claims for credit or refund of an overpayment of manufacturers tax imposed by Chapter 32. It does not apply, however, to a claim for credit or refund on any overpayment described in paragraph (b) of this section which arises by reason of the application of section 6416(b)(2) of the Code.

(2) *Supporting evidence required.* No credit or refund of any overpayment to which this paragraph (a) applies shall be allowed unless the person who paid the tax submits with the claim a written consent of the ultimate purchaser to the allowance of the credit or refund, or submits with the claim a statement, supported by sufficient available evidence, asserting that:

(i) The person has neither included the tax in the price of the article with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person has repaid the amount of the tax to the ultimate purchaser of the article.

(3) *Ultimate purchaser—(i) General rule.* The term “ultimate purchaser”, as used in paragraph (a)(2) of this section, means the person who purchased the article for consumption, or for use in the manufacture of other articles and not for resale in the form in which purchased.

(ii) *Special rule under section 6416(a)(3)—(A) Conditions to be met.* If tax under chapter 32 of the Code is paid in respect of an article and the appropriate TTB officer determines that the article is not subject to tax under chapter 32, the term “ultimate purchaser”, as used in paragraph (a)(2) of this section, includes any wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of the determination holds for sale any such article with respect to which tax has been paid, if the claim for credit or refund of the overpayment in respect of the articles held for sale by wholesaler, jobber, distributor, or retailer is filed on or before the date on which the person who